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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/544,004	04/06/2000	Asgeir Saebo	CONLINCO-04284	7988

23535 7590 01/12/2005

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EXAMINER	
WANG, SHENGJUN	
ART UNIT	PAPER NUMBER
1617	

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/544,004	SAEBO ET AL.	
	Examiner	Art Unit	
	Shengjun Wang	1617	

-- The MAILING DATE f this communication appears on the cover sheet with the correspondence address --

Period f r Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 October 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5,10-19,24-30 and 39* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5,10-19,24-30 and 39* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Pri rity under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 12, 2004 has been entered.

Double Patenting Rejections

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 10-19, 24-30 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2, 3 and 8-22 of U.S. Patent No. 6,524,527. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims herein are generic to the claims in '527.

Disclosure Objections

3. The disclosure is objected to because of the following informalities: The table numbers and the recitation in the examples appears not match. See, e.g., example 13 recites table 28, actual results appeared in table 26, example 15 recites table 29, but the data is in table 28.

Appropriate correction is required.

4. The use of the trademarks Controx, Herbalox, Covi-OX has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology (i.e., chemical names of the components therein.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks. *Further, it is noted that applicants have not provide any detailed information for these commercial products on the record.*

Claim Rejections 35 U.S.C. §103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-5, 10-19, 24-30 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over both Cook et al. (U.S. Patent 5,760,082, IDS) and Lievense et al. (U.S. patent 6,159,525) in view of Cain et al. (WO 97/18320, IDS), Remmereit (6,034,132), and in further view of applicants' admission.

3. Cook teaches a food product containing conjugated linoleic acids, their esters, salts or mixtures. The linoleic acid compounds may be from corn oil, safflower etc. the food products may further containing vitamins. See, particularly, the abstract, column 1, lines 10-13, lines 49-60. Column 2, lines 51-67, Examples 3 and 5. Cook further teaches that conjugated linoleic acid may be incorporated into various food products. See column 5, lines 6-14. Lievense et al teaches a food products comprising CLA compounds which has sensoric properties as good as corresponding food product without CLA.

4. The primary references do not teach expressly the employment of a combination of antioxidant and metal (oxidant) chelator, such ascorbic acid and lecithin, or the use of a commercial antioxidant product, Controx, or particularly point out the amount of VOC.

However, Cain teaches that CLA is known to be sensitive to oxygen and addition of antioxidant to a composition comprising CLA is recommended. The antioxidants are selected from the groups consisting of tocopherols, TBHQ, BHT, BHA, free radical scavengers, propylgallate, ascorbylesters of fatty acids. See, page 6, lines 29-36 and claims 10 and 13-15. Remmereit also teaches that CLA is susceptible to oxidation and it is desirable to add suitable antioxidants to CLA composition for human use. Amount the recommended antioxidants are tocopherol, lecithin, ascorbate etc. Further, applicants admitted that some commercial antioxidant comprising both tocopherol and lecithin. See page 23 herein.

Therefore, it would have been prima facie obvious to a person of ordinary skill in the art, at the time the claimed the invention was made, to employ vitamin C, lecithin, and tocopherol, such as those commercial antioxidant composition, in the CLA composition, or food products in Cook or Lievense.

A person of ordinary skill in the art would have been motivated to employ vitamin C in the composition, or food products in Cook or Lievense because vitamins are known to be useful with CLA in food products, and tocopherol, lecithin, and vitamin C are those of well-known antioxidants which are known to be useful in CLA composition for stabilizing CLA compounds. As to the employ of two of the known antioxidants, note, it is prima facie obvious to combine two compositions each of which is taught in the prior art to be useful for same purpose in order to form third composition that is to be used for very the same purpose; idea of combining them flows logically from their having been individually taught in prior art; thus, the claimed invention which is a combination of two known antioxidants sets forth prima facie obvious subject matter. See In re Kerkhoven, 205 USPQ 1069. Regarding to the limitation about the amount of VOC, since the prior art teach that the food products containing CLA do not have any sensoric property caused by VOC, the amount of VOC is reasonably believed to be very low. The amount of VOC claimed herein is either within the scope of the prior art, or an obvious variation of the prior art, lacking the criticality to the final products. Regarding the particular function of vitamin C claimed herein, i.e., metal chelator, note the intended function of a component in a composition would not render any patentable weight to the composition.

Response to the Arguments

Applicants' amendments, remarks, and the declaration submitted October 12, 2004 have been fully considered, but are not persuasive for reasons discussed below.

Applicants argue that an unexpected benefit is provided by the claimed subject matter. Regarding the establishment of unexpected results, a few notable principles are well settled. It is applicant's burden to explain any proffered data and establish how any results therein should be

taken to be unexpected and significant. See MPEP 716.02 (b). The evidence must be clear and convincing. The claims must be commensurate in the scope with any evidence of unexpected results. See MPEP 716.02 (d). Further, A DECLARATION UNDER 37 CFR 1.132 must compare the claimed subject matter with the closest prior art in order to be effective to rebut a prima facie case if obviousness. See, MPEP 716.02 (e). The evidences provided by applicants are neither clear and convincing , nor commensurate in scope with the claimed invention. The claims are directed to the employment of a combination of two functional components: an antioxidant and a metal chelator. Each component may read on thousands of compounds. Applicants' conclusion is based on a test of commercial products with no specific information as to the actual compounds comprised therein. There is no information as to what are the antioxidant and metal chelator tested. Therefore, it is impossible for the examiner to make judgment based on the vague information provided in the declaration. Further, "antioxidant" and "metal chelator" would read on many compounds commonly present in food products. The prior art teaches broadly the usefulness of CLA in food products. There is no obvious reasons why the CLA can not be used in food products with antioxidants, and metal chelator. Note the examples 13 and 15 herein require certain amounts of the antioxidants and metal oxidant chelator to achieve the benefit.

5. The declaration under 37 CFR 1.132 filed October 12, 2004 is insufficient to overcome the rejection as set forth in the last Office action because: the evidence presented therein is not clear and convincing, and is not commensurate in scope with the claimed invention.

6. The prior art have fairly suggest the employment of antioxidants, including those so called "metal chelators" herein, in CLA composition. The particular two species employed herein are amount the five species have been expressly described. The claimed invention,

employing two particular antioxidants expressly disclosed in the prior art, falls within the range of prior art disclosure. Therefore, absent objective evidence of non-obviousness, the claims have been properly rejected under 35 U.S.C. 103.

7. Applicants are advised to present a clear and convincing evidence and amend the claims so that they are commensurate in scope with such evidence.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shengjun Wang whose telephone number is (571) 272-0632. The examiner can normally be reached on Monday to Friday from 7:00 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SHENGJUN WANG
PRIMARY EXAMINER

Shengjun Wang
Primary Examiner
Art Unit 1617